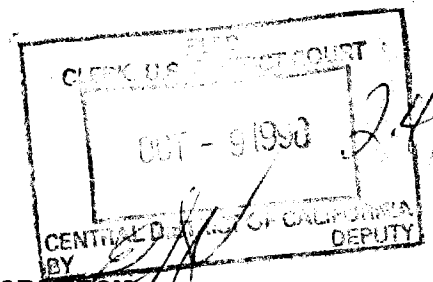


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 claimant and Cross-Claimant POTLATCH CORPORATION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, et
 al.,

Plaintiffs,

vs.

MONTROSE CHEMICAL CORPORATION OF
 CALIFORNIA, et al.,

Defendants.

POTLATCH CORPORATION,

Counterclaimant,

vs.

UNITED STATES OF AMERICA, THE
 SECRETARY OF COMMERCE, THE
 SECRETARY OF THE INTERIOR, THE
 UNDERSECRETARY FOR OCEANS AND
 ATMOSPHERE, THE ADMINISTRATOR OF
 THE ENVIRONMENTAL PROTECTION
 AGENCY, STATE OF CALIFORNIA,
 STATE LANDS COMMISSION,
 DEPARTMENT OF FISH AND GAME,
 DEPARTMENT OF PARKS AND
 RECREATION, DEPARTMENT OF HEALTH
 SERVICES, CALIFORNIA STATE WATER
 RESOURCES BOARD, and LOS ANGELES
 REGIONAL WATER QUALITY CONTROL
 BOARD,

Counterdefendants.

NO. CV 90-3122-AAH (JRx)
 ANSWER OF DEFENDANT
 POTLATCH CORPORATION TO
 FIRST AMENDED COMPLAINT;
 COUNTERCLAIMS; CROSS-
 CLAIMS; DEMAND FOR JURY
 TRIAL

35

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NO. 2 OF LOS ANGELES COUNTY)**

POTLATCH CORPORATION,
Cross-Claimant,
vs.
COUNTY SANITATION DISTRICT NO. 2
OF LOS ANGELES,
Cross-Defendant.

POTLATCH CORPORATION,
Cross-Claimant,
vs.
COUNTY SANITATION DISTRICT NO. 2
OF LOS ANGELES, and DOES 1
through 40,000, being a class of
persons and entities similarly
situated,
Cross-Defendant.

I.

ANSWER

COMES NOW defendant Potlatch Corporation ("Potlatch"),
and responding for itself alone to the First Amended Complaint,
answers and alleges as follows:

1. To the extent paragraph 1 of plaintiffs' First
Amended Complaint contains conclusions of law, it requires no
response. Potlatch is without knowledge or information sufficient
to form a belief as to the truth of the remaining allegations and
therefore denies the same.

2. To the extent paragraph 2 of plaintiffs' First
Amended Complaint contains conclusions of law, it requires no

1 response. Potlatch is without knowledge or information sufficient
2 to form a belief as to the truth of the remaining allegations and
3 therefore denies the same.

4 3. Potlatch admits this Court has jurisdiction over
5 this action.

6 4. Responding to paragraph 4 of the First Amended
7 Complaint, Potlatch denies the factual allegations thereof, except
8 that Potlatch admits that plaintiffs have alleged injury occurring
9 in this District.

10 5. Responding to paragraph 5 of the First Amended
11 Complaint, Potlatch is without knowledge or information sufficient
12 to form a belief as to the truth of the allegations of paragraph
13 5 and therefore denies the same.

14 6. Responding to paragraph 6 of the First Amended
15 Complaint, Potlatch is without knowledge or information sufficient
16 to form a belief as to the truth of the allegations of paragraph
17 6 and therefore denies the same.

18 7. Responding to paragraph 7 of the First Amended
19 Complaint, Potlatch is without knowledge or information sufficient
20 to form a belief as to the truth of the allegations of paragraph
21 7 and therefore denies the same.

22 8. Responding to paragraph 8 of the First Amended
23 Complaint, Potlatch is without knowledge or information sufficient
24 to form a belief as to the truth of the allegations of paragraph
25 8 and therefore denies the same.

26 9. Responding to paragraph 9 of the First Amended
27 Complaint, Potlatch is without knowledge or information sufficient

28 ///

1 to form a belief as to the truth of the allegations of paragraph
2 9 and therefore denies the same.

3 10. Responding to paragraph 10 of the First Amended
4 Complaint, Potlatch is without knowledge or information sufficient
5 to form a belief as to the truth of the allegations of paragraph
6 10 and therefore denies the same.

7 11. Responding to paragraph 11 of the First Amended
8 Complaint, Potlatch admits that it is incorporated under the laws
9 of the State of Delaware and that during the period from 1952 to
10 January 1979, it owned a paper products manufacturing plant in
11 Pomona, California, and that it operated that plant from 1952 to
12 mid-1978. Except as expressly admitted or alleged, Potlatch
13 denies the allegations of paragraph 11.

14 12. Responding to paragraph 12 of the First Amended
15 Complaint, Potlatch is without knowledge or information sufficient
16 to form a belief as to the truth of the allegations of paragraph
17 12 and therefore denies the same, except that Potlatch admits that
18 it sold its paper products manufacturing plant in Pomona,
19 California to the Simpson Paper Company in January 1979.

20 13. Responding to paragraph 13 of the First Amended
21 Complaint, Potlatch is informed and believes that the allegations
22 therein are true and on that basis admits that the same are true.

23 14. Responding to paragraph 14 of the First Amended
24 Complaint, Potlatch admits that the terms "DDT" and "PCBs" were
25 listed as hazardous substances under CERCLA subsequent to the time
26 that Potlatch owned and operated its Pomona plant. Potlatch is
27 without knowledge or information sufficient to form a belief as to

28 ///

1 the truth of the remaining allegations of paragraph 14 and
2 therefore denies the same.

3 15. Responding to paragraph 15 of the First Amended
4 Complaint, Potlatch is without knowledge or information sufficient
5 to form a belief as to the truth of the allegations of paragraph
6 15 and therefore denies the same.

7 16. Responding to paragraph 16 of the First Amended
8 Complaint, Potlatch admits that the San Pedro Channel is located
9 off the coast of California near the City of Los Angeles.
10 Potlatch is without knowledge or information sufficient to form a
11 belief as to the truth of the remaining allegations of paragraph
12 16 and therefore denies the same.

13 17. Responding to paragraph 17 of the First Amended
14 Complaint, Potlatch is without knowledge or information sufficient
15 to form a belief as to the truth of the allegations of paragraph
16 17 and therefore denies the same.

17 18. Responding to paragraph 18 of the First Amended
18 Complaint, Potlatch is without knowledge or information sufficient
19 to form a belief as to the truth of the allegations of paragraph
20 18 and therefore denies the same.

21 19. Responding to paragraph 19 of the First Amended
22 Complaint, Potlatch is without knowledge or information sufficient
23 to form a belief as to the truth of the allegations of paragraph
24 19 and therefore denies the same.

25 20. Responding to paragraph 20 of the First Amended
26 Complaint, Potlatch is without knowledge or information sufficient
27 to form a belief as to the truth of the allegations of paragraph
28 20 and therefore denies the same.

1 21. Responding to paragraph 21 of the First Amended
2 Complaint, Potlatch is without knowledge or information sufficient
3 to form a belief as to the truth of the allegations of paragraph
4 21 and therefore denies the same.

5 22. Responding to paragraph 22 of the First Amended
6 Complaint, Potlatch is without knowledge or information sufficient
7 to form a belief as to the truth of the allegations of paragraph
8 22 and therefore denies the same.

9 23. Responding to paragraph 23 of the First Amended
10 Complaint, Potlatch is without knowledge or information sufficient
11 to form a belief as to the truth of the allegations of paragraph
12 23 and therefore denies the same.

13 24. Responding to paragraph 24 of the First Amended
14 Complaint, Potlatch is without knowledge or information sufficient
15 to form a belief as to the truth of the allegations of paragraph
16 24 and therefore denies the same.

17 25. Responding to paragraph 25 of the First Amended
18 Complaint, Potlatch is without knowledge or information sufficient
19 to form a belief as to the truth of the allegations of paragraph
20 25 and therefore denies the same.

21 26. Responding to paragraph 26 of the First Amended
22 Complaint, Potlatch is without knowledge or information sufficient
23 to form a belief as to the truth of the allegations of paragraph
24 26 and therefore denies the same.

25 27. Responding to paragraph 27 of the First Amended
26 Complaint, Potlatch denies the allegations therein, except that it
27 admits it sold its plant in Pomona to Simpson Paper Company in
28 January 1979.

1 28. Responding to paragraph 28 of the First Amended
2 Complaint, Potlatch admits it sold its plant in Pomona, California
3 to Simpson Paper Company in January 1979. Potlatch is without
4 knowledge or information sufficient to form a belief as to the
5 truth of the remaining allegations of paragraph 28 and therefore
6 denies the same.

7 29. Responding to paragraph 29 of the First Amended
8 Complaint, Potlatch is without knowledge or information sufficient
9 to form a belief as to the truth of the allegations of paragraph
10 29 and therefore denies the same.

11 30. Responding to paragraph 30 of the First Amended
12 Complaint, Potlatch is without knowledge or information sufficient
13 to form a belief as to the truth of the allegations of paragraph
14 30 and therefore denies the same.

15 31. Responding to paragraph 31 of the First Amended
16 Complaint, Potlatch is without knowledge or information sufficient
17 to form a belief as to the truth of the allegations of paragraph
18 31 and therefore denies the same.

19 32. Responding to paragraph 32 of the First Amended
20 Complaint, Potlatch is without knowledge or information sufficient
21 to form a belief as to the truth of the allegations of paragraph
22 32 and therefore denies the same.

23 33. Paragraph 33 of the First Amended Complaint
24 contains conclusions of law, and therefore it requires no
25 response.

26 34. Paragraph 34 of the First Amended Complaint
27 contains conclusions of law, and therefore it requires no
28 response.

1 35. Paragraph 35 of the First Amended Complaint
2 contains conclusions of law, and therefore it requires no
3 response.

4 36. Responding to paragraph 36 of the First Amended
5 Complaint, Potlatch reincorporates its responses to paragraphs 1
6 through 35.

7 37. Paragraph 37 of the First Amended Complaint
8 contains conclusions of law, and therefore it requires no
9 response.

10 38. Paragraph 38 of the First Amended Complaint
11 contains conclusions of law, and therefore it requires no
12 response.

13 39. Responding to paragraph 39 of the First Amended
14 Complaint, Potlatch denies that the "Potlatch/Simpson plants and
15 the land on which they are located" are "facilities" within the
16 meaning of CERCLA. Potlatch is without knowledge or information
17 sufficient to form a belief as to the truth of the remaining
18 allegations of paragraph 39 and therefore denies the same.

19 40. Responding to paragraph 40 of the First Amended
20 Complaint, Potlatch is without knowledge or information sufficient
21 to form a belief as to the truth of the allegations of paragraph
22 40 and therefore denies the same.

23 41. Responding to paragraph 41 of the First Amended
24 Complaint, Potlatch is without knowledge or information sufficient
25 to form a belief as to the truth of the allegations of paragraph
26 41 and therefore denies the same.

27 42. Responding to paragraph 42 of the First Amended
28 Complaint, Potlatch is without knowledge or information sufficient

1 to form a belief as to the truth of the allegations of paragraph
2 42 and therefore denies the same.

3 43. Responding to paragraph 43 of the First Amended
4 Complaint, Potlatch denies the allegations of paragraph 43.

5 44. Responding to paragraph 44 of the First Amended
6 Complaint, Potlatch is without knowledge or information sufficient
7 to form a belief as to the truth of the allegations of paragraph
8 44 and therefore denies the same.

9 45. Responding to paragraph 45 of the First Amended
10 Complaint, Potlatch is without knowledge or information sufficient
11 to form a belief as to the truth of the allegations of paragraph
12 45 and therefore denies the same.

13 46. Responding to paragraph 46 of the First Amended
14 Complaint, Potlatch denies the allegations as to itself and is
15 without knowledge or information sufficient to form a belief as to
16 the truth of the remaining allegations of paragraph 46 and
17 therefore denies the same.

18 47. Responding to paragraph 47 of the First Amended
19 Complaint, Potlatch denies the allegations as to itself and is
20 without knowledge or information sufficient to form a belief as to
21 the truth of the remaining allegations of paragraph 47 and
22 therefore denies the same.

23 48. Responding to paragraph 48 of the First Amended
24 Complaint, Potlatch denies the allegations as to itself and is
25 without knowledge or information sufficient to form a belief as to
26 the truth of the remaining allegations of paragraph 48 and
27 therefore denies the same.

28 ///

1 49. Responding to paragraph 49 of the First Amended
2 Complaint, Potlatch is without knowledge or information sufficient
3 to form a belief as to the truth of the allegations of paragraph
4 49 and therefore denies the same.

5 50. Responding to paragraph 50 of the First Amended
6 Complaint, Potlatch denies the allegations of paragraph 50.

7 51. Responding to paragraph 51 of the First Amended
8 Complaint, Potlatch realleges and incorporates by reference its
9 responses to paragraphs 1 through 35.

10 52. Responding to paragraph 52 of the First Amended
11 Complaint, Potlatch is without knowledge or information sufficient
12 to form a belief as to the truth of the allegations of paragraph
13 52 and therefore denies the same.

14 53. Responding to paragraph 53 of the First Amended
15 Complaint, Potlatch is without knowledge or information sufficient
16 to form a belief as to the truth of the allegations of paragraph
17 53 and therefore denies the same.

18 54. Paragraph 54 of the First Amended Complaint
19 contains conclusions of law, and therefore it requires no
20 response.

21 55. Responding to paragraph 55 of the First Amended
22 Complaint, Potlatch is without knowledge or information sufficient
23 to form a belief as to the truth of the allegations of paragraph
24 55 and therefore denies the same.

25 56. Responding to paragraph 56 of the First Amended
26 Complaint, Potlatch is without knowledge or information sufficient
27 to form a belief as to the truth of the allegations of paragraph
28 56 and therefore denies the same.

1 57. Responding to paragraph 57 of the First Amended
2 Complaint, Potlatch is without knowledge or information sufficient
3 to form a belief as to the truth of the allegations of paragraph
4 57 and therefore denies the same.

5 58. Responding to paragraph 58 of the First Amended
6 Complaint, Potlatch is without knowledge or information sufficient
7 to form a belief as to the truth of the allegations of paragraph
8 58 and therefore denies the same.

9 59. Responding to paragraph 59 of the First Amended
10 Complaint, Potlatch is without knowledge or information sufficient
11 to form a belief as to the truth of the allegations of paragraph
12 59 and therefore denies the same.

13 60. Responding to paragraph 60 of the First Amended
14 Complaint, Potlatch is without knowledge or information sufficient
15 to form a belief as to the truth of the allegations of paragraph
16 60 and therefore denies the same.

17 61. Responding to paragraph 61 of the First Amended
18 Complaint, Potlatch is without knowledge or information sufficient
19 to form a belief as to the truth of the allegations of paragraph
20 61 and therefore denies the same.

21 62. Responding to paragraph 62 of the First Amended
22 Complaint, Potlatch is without knowledge or information sufficient
23 to form a belief as to the truth of the allegations of paragraph
24 62 and therefore denies the same.

25 63. Responding to paragraph 63 of the First Amended
26 Complaint, Potlatch is without knowledge or information sufficient
27 to form a belief as to the truth of the allegations of paragraph
28 63 and therefore denies the same.

1 **AFFIRMATIVE AND OTHER DEFENSES**

2

3 **Failure To State A Claim Upon Which**

4 **Relief Can Be Granted**

5

6 1. The First Amended Complaint and each claim therein

7 fail to state a claim upon which relief can be granted.

8

9 **Statutes Of Limitations**

10 2. The First Amended Complaint and each claim therein

11 are barred by the applicable statutes of limitations including,

12 but not limited to, Section 113(g) of CERCLA, 42 U.S.C. § 9613(g).

13

14 **Failure To Join Indispensable Parties**

15 3. Plaintiffs have failed, under Federal Rules of

16 Civil Procedure 12 and 19, to join indispensable parties known by

17 plaintiffs to have discharged hazardous substances into the areas

18 set out in the First Amended Complaint. Consequently, the Court

19 cannot grant the requested relief.

20

21 **Failure To Join Potentially**

22 **Responsible Parties As Defendants**

23 4. Plaintiffs have failed to join as defendants

24 owners, operators, generators and transporters who released

25 hazardous substances which caused the injuries of which the

26 plaintiffs complain in their First Amended Complaint. As a

27 result, it would be unjust and contrary to the public interest to

28 ///

1 impose upon Potlatch any liability for the matters alleged in the
2 First Amended Complaint.

3
4 Acts Or Omissions Of Third Parties/Act Or Acts Of God

5 5. Potlatch is informed and believes, and on that
6 basis alleges, that the actual or threatened releases of hazardous
7 substances alleged in the First Amended Complaint, if any, were
8 caused solely by the acts or omissions of third parties who were
9 not employees or agents of Potlatch, which acts or omissions did
10 not occur in connection with a contractual relationship, existing
11 directly or indirectly, with Potlatch. At no time did Potlatch
12 exercise control over the persons or entities responsible for
13 actual or threatened releases of the hazardous substances, if any,
14 alleged in the First Amended Complaint. At all times Potlatch
15 acted with due care with respect to such hazardous substances, and
16 took reasonable precautions against foreseeable acts or omissions
17 of any third parties and the consequences that could foreseeably
18 result therefrom. Therefore, pursuant to Section 107(b)(3) of
19 CERCLA, 42 U.S.C. § 9607(b)(3), Potlatch is not liable to
20 plaintiffs for the matters asserted in the First Amended
21 Complaint.

22 6. Potlatch is informed and believes, and on that
23 basis alleges, that the actual or threatened releases of hazardous
24 substances alleged in the First Amended Complaint, if any, were
25 caused solely by an act or acts of God and/or by an act or acts of
26 God in combination with acts or omissions of third parties alleged
27 in paragraph 5, above. Therefore, pursuant to Sections 107(b)(1)
28 and (4) of CERCLA, 42 U.S.C. §§ 9607(b)(1) and (4), Potlatch is

1 not liable to plaintiffs for the matters asserted in the First
2 Amended Complaint.

3
4 **Costs And Damages Incurred Prior To**

5 **CERCLA Are Not Recoverable**

6 7. Plaintiffs are barred, pursuant to Section
7 107(f)(1) of CERCLA, 42 U.S.C. § 9607(f)(1), from recovering
8 response costs or damages for injuries to natural resources, if
9 any, incurred prior to the enactment of CERCLA on December 11,
10 1980. If any releases by Potlatch occurred, which is denied, such
11 releases and any damage caused thereby occurred prior to the
12 enactment of CERCLA on December 11, 1980, and therefore Potlatch
13 is not liable for such damages pursuant to Section 107(f)(1) of
14 CERCLA, 42 U.S.C. § 9607(f)(1).

15
16 **Federally Permitted Releases**

17 8. At all times material hereto, any and all of the
18 releases alleged by plaintiffs as being attributable to Potlatch,
19 or which allegedly originated from its plant in Pomona, or which
20 are alleged to have resulted in plaintiffs' incurrence of response
21 costs or any natural resources damages, were federally permitted
22 releases exempt from liability under Section 107(j) of CERCLA, 42
23 U.S.C. § 9607(j).

24
25 **Cause In Fact**

26 9. Plaintiffs have not alleged and cannot prove any
27 facts showing that Potlatch's conduct was the cause in fact of any
28 releases or threatened releases alleged in the First Amended

1 Complaint or that such alleged releases or alleged threatened
2 releases, if any, caused injury to natural resources or
3 necessitated the incurrence of response costs.

4
5 **Proximate Cause**

6 10. Plaintiffs have not alleged and cannot prove any
7 facts showing that the conduct of Potlatch was the proximate cause
8 of any releases or threatened releases alleged in the First
9 Amended Complaint or that such alleged releases, if any, were the
10 proximate cause of injury to natural resources or necessitated the
11 incurrence of response costs.

12
13 **De Minimis Discharges**

14 11. Any discharge of hazardous substances by Potlatch,
15 which is denied, was de minimis and therefore such alleged
16 discharge was not the cause of damages alleged by plaintiffs and
17 therefore Potlatch has no liability.

18
19 **No Liability For Actions Undertaken Pursuant**
20 **To State Or Federal Authority**

21 12. Any actions undertaken by Potlatch were at the
22 direction or with the permission or acquiescence of state and
23 federal authorities and therefore Potlatch has no liability.

24
25 **License**

26 13. The First Amended Complaint and each claim therein
27 are barred because Potlatch was licensed, and in some instances
28 compelled, by plaintiff State of California, through the Los

1 Angeles Regional Water Quality Control Board, to dispose of
2 industrial wastes in the manner in which it did. Further,
3 operations at the Potlatch plant were approved by agencies of the
4 State of California having regulatory authority over waste
5 disposal from the Potlatch plant.

6
7 **Failure To Comply With**

8 **National Contingency Plan**

9 14. The response costs allegedly incurred by plaintiffs
10 have not been approved under, and are inconsistent with, the
11 National Contingency Plan. By reason of the foregoing, plaintiffs
12 are not entitled to recover from Potlatch response costs or any
13 other relief requested in the First Amended Complaint.

14
15 **Lack Of Standing To Sue Under CERCLA**

16 15. Plaintiffs lack standing to assert any claims
17 purportedly alleged in the First Amended Complaint under CERCLA.

18
19 **Failure Of EPA To Fulfill Responsibilities**

20 **To Assist In Prompt Abatement Of Alleged**

21 **Hazardous Conditions**

22 16. Beginning no later than 1981, EPA had the legal
23 responsibility under Section 104 of CERCLA, 42 U.S.C. § 9604, and
24 Executive Order No. 12316, dated August 14, 1981, as amended on
25 May 5, 1983 by Executive Order No. 12418, to use technical and
26 financial resources available to it, including the "Superfund"
27 created by CERCLA, to promptly, effectively and cost-efficiently

28 ///

1 respond to and abate alleged actual or threatened releases of
2 hazardous substances.

3 17. EPA and its Administrator have failed persistently
4 to take prompt, effective and cost-efficient action to respond to
5 any of the alleged releases and threatened releases in the First
6 Amended Complaint. Potlatch is informed and believes and
7 therefore alleges that these omissions by EPA have resulted and
8 will result in the exacerbation of any and all of the damages
9 alleged in the First Amended Complaint. Consequently, EPA is
10 responsible for said damage.

11
12 **Negligence**

13 18. Potlatch is informed and believes, and on that
14 basis alleges, that plaintiffs, and their agents, did not exercise
15 ordinary care, caution and prudence to prevent the alleged
16 releases, if any, and that any resulting injuries sustained were
17 caused and contributed to, in whole or in part, by the negligence
18 of the plaintiffs.

19
20 **Undue Delay/Mitigation Of Damages**

21 19. The plaintiffs have known, or should have known, of
22 any alleged releases for many years. The plaintiffs have had the
23 ability and the authority to take corrective action with respect
24 thereto. If plaintiffs are entitled to recover any costs or
25 damages, such recovery must be reduced by the excess costs and
26 damages attributable to plaintiffs' prolonged failure to take
27 appropriate action to mitigate such costs and damages prior and
28 subsequent to the institution of this action.

1 **Comparative Fault/Contributory Negligence**

2 20. Plaintiffs, by their conduct, negligent acts and
3 omissions, have contributed to and proximately caused the injuries
4 of which they complain in their First Amended Complaint. As such,
5 the First Amended Complaint and each claim therein is barred by
6 the contributory negligence of plaintiffs.

7
8 **Joint And Several Liability**

9 21. The statutes and other law relied upon by
10 plaintiffs in the First Amended Complaint do not authorize the
11 imposition of joint and several liability upon Potlatch.

12 22. Potlatch is not jointly and severally liable in
13 that imposition of such liability on Potlatch would be
14 fundamentally inequitable. Furthermore, plaintiffs' response
15 costs and damages, if any, are divisible and susceptible of
16 apportionment, thereby making joint and several liability
17 unnecessary and inappropriate.

18
19 **Equitable Factors Under CERCLA**

20 23. Application of equitable factors requires that
21 Potlatch's share of liability be determined to be zero.

22
23 **Failure To Incur Response Costs**

24 24. The claims for relief alleged in the First Amended
25 Complaint are barred by plaintiffs' failure to incur response
26 costs.

27
28 ///

Failure To Comply With Preassessment

Screen Regulations

25. Any document or documents alleged by plaintiffs to constitute a Preassessment Screen Determination fail to satisfy the criteria set forth in 43 C.F.R. § 11, and/or are inconsistent with the National Contingency Plan, and therefore cannot serve as the basis for any recovery against Potlatch.

Estoppel

26. Plaintiffs are barred from recovery by the doctrine of estoppel in that plaintiffs either specifically approved Potlatch's actions with respect to any and all discharges of wastewater from the Potlatch plant into the Los Angeles County Sanitation Districts ("LACSD") wastewater collection and treatment system or authorized or directed Potlatch with respect to any and all such discharges. In approving, authorizing or directing Potlatch's actions, the plaintiffs acted in concert as agents of one another.

27. Plaintiffs are further barred from recovery by the doctrine of estoppel in that plaintiffs in conjunction and in coordination with the LACSD developed and implemented guidelines and requirements respecting discharges into the wastewater system, guidelines and requirements with which Potlatch complied.

Laches

28. By reason of the facts alleged in paragraphs 12 through 27 herein, the First Amended Complaint and each claim therein are barred by the doctrine of laches in that plaintiffs

1 had notice of the alleged acts or omissions contained in the First
2 Amended Complaint and had authority under existing law to prevent
3 such acts or omissions but refrained from doing so to the
4 detriment of Potlatch.

5
6 **Waiver**

7 29. By reason of the facts alleged in paragraphs 12
8 through 27 herein, the First Amended Complaint and each claim
9 therein are barred by the doctrine of waiver.

10
11 **Unclean Hands**

12 30. The plaintiffs, by virtue of their acts of
13 negligence in prescribing, supervising, monitoring and controlling
14 any alleged discharges of hazardous substances, caused any
15 releases and threatened releases of hazardous substances, if such
16 are found to exist. Furthermore, the plaintiffs have exacerbated
17 the costs and difficulties of abatement of the alleged conditions
18 by their failure to perform their duties to remedy such conditions
19 and their negligent abatement attempts. As a consequence, the
20 plaintiffs, as the entities responsible for creating the
21 conditions of which they now complain, lack the clean hands
22 necessary to invoke equity jurisdiction.

23
24 **CERCLA Is Unconstitutional**

25 31. Plaintiff's First Amended Complaint relies solely
26 upon CERCLA, 42 U.S.C. § 9601 et seq. Alleged actions or conduct
27 of Potlatch took place prior to enactment of CERCLA, and were
28 lawful in all respects under all federal and state laws then

1 applicable. Retroactive application of CERCLA to Potlatch's
2 alleged conduct violates the Due Process Clauses of the Fifth and
3 Fourteenth Amendments of the United States Constitution.

4 32. CERCLA is unconstitutionally vague and violates the
5 Due Process Clause of the Fifth Amendment by impermissibly
6 allowing selective enforcement of CERCLA.

7 33. The enactment of CERCLA was an unconstitutional
8 delegation of power to the Executive Branch and violates the Tenth
9 Amendment of the United States Constitution.

10 34. The creation of a federal cause of action for
11 damages for natural resources in CERCLA is an unconstitutional
12 exercise of power by the federal government lacking the requisite
13 nexus to the Commerce Clause of the United States Constitution.

14 35. The enactment of Section 113(g)(1) of CERCLA, 42
15 U.S.C. § 9613(g)(1), to revive expired statute of limitations
16 periods, constitutes double jeopardy in violation of the United
17 States Constitution.

18
19 **Prior Authorization Of Commitment**
20 **Of Natural Resources**

21 36. The methods used to dispose of wastes and the
22 substances disposed of at the White's Point Outfall were
23 specifically identified as an irreversible and irretrievable
24 commitment of natural resources, and plaintiffs are therefore
25 precluded by Section 107(f)(1) of CERCLA, 42 U.S.C. § 9607(f)(1),
26 from attempting to recover from defendants any alleged damages or
27 response costs.

28 ///

1 **Lack Of Government Control Over Natural Resources**

2 37. Plaintiffs are precluded from bringing an action
3 against defendants for the recovery of response costs and damages
4 for alleged injury to natural resources because the natural
5 resources which are the subject of this action are not natural
6 resources "belonging to, managed by, held in trust by, and
7 pertaining to, or otherwise controlled by" the plaintiffs under
8 Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).
9

10 **Consent**

11 38. Having consented to the alleged releases from the
12 Joint Outfall System ("JOS"), including the Joint Water Pollution
13 Control Plant ("JWPCP") facility, plaintiffs consented to the
14 injury alleged in the First Amended Complaint, and by such
15 consent, are barred from maintenance of this action.
16

17 **Assumption Of Risk**

18 39. At the time that plaintiffs consented to the
19 alleged releases from the JOS, including the JWPCP facility,
20 plaintiffs knowingly and expressly assumed the risk that the
21 conditions alleged to exist at the White's Point Outfall would
22 exist. Such assumption of risk is a total bar to the maintenance
23 of this action.
24

25 WHEREFORE, defendant Potlatch Corporation prays that:

26 1. The First Amended Complaint be dismissed with
27 prejudice;

28 ///

1 2. Potlatch be awarded its costs and reasonable
2 attorney's fees herein; and

3 3. For such other and further relief as the Court
4 deems proper.

5
6
7 **II.**

8 **COUNTERCLAIMS**

9
10 All of Potlatch's counterclaim allegations assume that
11 the plaintiffs' claims against Potlatch are true and proper, which
12 Potlatch denies. The assumption is solely for the purpose of
13 asserting these counterclaims, which are therefore alleged in the
14 alternative and do not constitute an admission by Potlatch of any
15 liability of any kind.

16
17 **JURISDICTION AND VENUE**

18 1. These counterclaims are made pursuant to Federal
19 Rule of Civil Procedure 13. Jurisdiction over Potlatch's
20 counterclaims is conferred upon this Court by 28 U.S.C. §§ 1331,
21 1332, 1346 and 2201, and 42 U.S.C. §§ 9607 and 9613.

22 2. Venue is proper in this district pursuant to 28
23 U.S.C. §§ 1331 and 1402, and 42 U.S.C. § 9613(b).

24
25 **PARTIES**

26 3. Counterclaimant Potlatch Corporation ("Potlatch")
27 is incorporated under the laws of the State of Delaware and doing
28 business in the State of California. From 1952 until January

1 1979, Potlatch owned a paper products manufacturing plant in
2 Pomona, California and operated that plant from 1952 to mid-1978.

3 4. Counterdefendants are the plaintiff governments.
4 Specifically, counterdefendants are the United States, including,
5 but not limited to, the Environmental Protection Agency, the
6 Department of Commerce, the Department of the Interior, the
7 National Oceanic and Atmospheric Administration, and the
8 Department of Defense, including, but not limited to, the
9 Department of the Army, the Department of the Navy and the
10 Department of the Air Force; and the State of California
11 ("State"), including, but not limited to, the Department of Fish
12 and Game ("Fish and Game"), the State Lands Commission ("SLC"),
13 the Department of Parks and Recreation ("Parks"), the Department
14 of Transportation ("DOT"), the Department of Water Resources
15 ("DWR"), the Department of Health Services ("DOHS"), the State
16 Water Resources Control Board ("State Board") and the Regional
17 Water Quality Control Board -- Los Angeles Region ("Regional
18 Board") (all government entities are hereinafter collectively
19 referred to as "plaintiff governments").

20 5. On or about August 24, 1990, Potlatch presented
21 written claims to the State, including the SLC, Fish and Game and
22 Parks. Potlatch is informed and believes, and on that basis
23 alleges, that on or about September 7, 1990, supplemental written
24 claims were presented to the DOT, DWR, DOHS, the State Board and
25 the Regional Board. These claims set forth the central facts
26 pertaining to the State's involvement in the release of hazardous
27 substances alleged in the First Amended Complaint, and demand that
28 the State assume any and all liability arising from the alleged

1 releases or threats of releases alleged therein. At the time of
2 this pleading, the State has either denied or failed to respond to
3 these claims.

4
5 **GENERAL ALLEGATIONS**

6 6. Potlatch is informed and believes, and on that
7 basis alleges, that plaintiff governments and their agencies or
8 departments selected, used, permitted, owned, operated, managed
9 and/or exercised jurisdiction over several ocean disposal sites
10 offshore Southern California including the Los Angeles Harbor,
11 various locations in the San Pedro Channel and the Palos Verdes
12 Shelf, including White's Point, all of which sites are described
13 more fully in the First Amended Complaint (hereinafter referred to
14 collectively as the "Ocean Disposal Sites"). Plaintiff
15 governments allege that hazardous substances have been disposed at
16 the Ocean Disposal Sites. Potlatch is informed and believes, and
17 on that basis alleges, that plaintiff governments selected, used,
18 permitted, owned, operated, managed and/or exercised jurisdiction
19 over such Ocean Disposal Sites at all relevant times and continue
20 to do so. If, as plaintiff governments allege, hazardous
21 substances have been released into the environment from the Ocean
22 Disposal Sites so as to cause natural resource damages and the
23 incurrence of any response costs, then plaintiff governments are
24 liable to Potlatch for any and all of Potlatch's costs of
25 response, costs of defending the First Amended Complaint and any
26 costs of response or damages for which Potlatch may be found to be
27 liable under the First Amended Complaint.

28 ///

1 7. Potlatch is informed and believes, and on that
2 basis alleges, that plaintiffs were knowingly and willfully
3 negligent with regard to their ownership, operation, use,
4 permitting, oversight and management of the Ocean Disposal Sites
5 identified above in paragraph 6.

6 8. Potlatch is informed and believes, and on that
7 basis alleges, that plaintiff governments violated their own
8 standards and/or regulations, as well as other federal regulations
9 in owning, using, permitting, managing, and exercising
10 jurisdiction over the Ocean Disposal Sites.

11 9. Potlatch is informed and believes, and on that
12 basis alleges, that plaintiff governments knew or should have
13 known in the early 1970s, if not before, that hazardous substance
14 including, but not limited to, PCBs and DDT, were being discharged
15 at the Ocean Disposal Sites. Specifically, the plaintiff
16 governments knew or should have known in the early 1970s the
17 quantities of hazardous substances, including PCBs and DDT,
18 discharged from the LACSD JOS and the injury, if any, to the
19 waters in and around the Ocean Disposal Sites.

20 10. The plaintiff governments, acting through the
21 United States Army Corps of Engineers, the Environmental
22 Protection Agency, the Regional Water Quality Control Board, the
23 Department of Park and Recreation and possibly others, issued
24 various permits including, but not limited to, National Pollutant
25 Discharge Elimination System ("NPDES") permits and/or
26 independently reviewed the permits for the discharge of hazardous
27 substances at the Ocean Disposal Sites.

28 ///

1 11. Potlatch is informed and believes, and on that
2 basis alleges, that LACSD was issued a NPDES permit by the
3 Regional Board and that the NPDES permit provided that the LACSD
4 could discharge PCBs from its facility into the ocean from the
5 White's Point Outfall.

6 12. Despite the plaintiff governments' knowledge of the
7 discharge of PCBs with the effects alleged by plaintiffs,
8 plaintiff governments failed to deny the NPDES permit to the LACSD
9 or to any other users of the Ocean Disposal Sites or to amend or
10 revoke the permits after issuance. Moreover, the plaintiff
11 governments failed to take timely action to alleviate the alleged
12 contamination.

13 13. Potlatch is further informed and believes, and on
14 that basis alleges, that discharges of such hazardous substances
15 as generated by agencies or departments of the plaintiff
16 governments caused or contributed to the damages to natural
17 resources alleged by the plaintiff governments in this case.

18
19 **COUNT I -- CERCLA § 107(a) CLAIM FOR COST RECOVERY**

20 14. Potlatch incorporates by reference Counterclaim
21 paragraphs 1 through 13 as though fully set forth herein.

22 15. Potlatch asserts counterclaims for the recovery of
23 its costs of response to the releases and/or threatened releases
24 of hazardous substances alleged by plaintiffs pursuant to Section
25 107(a)(B) of CERCLA, 42 U.S.C. § 107(a)(B), against plaintiff
26 governments in their capacities as owners and operators of
27 facilities, and/or as persons who arranged for disposal of
28 hazardous substances, and/or as generators of hazardous substances

1 released into the environment, and/or as transporters of hazardous
2 substances.

3 16. Potlatch has incurred and will continue to incur
4 necessary costs of response consistent with the National
5 Contingency Plan, as set forth in Section 107(a)(B) of CERCLA, 42
6 U.S.C. § 9607(a)(B), as a result of actual and/or threatened
7 releases of hazardous substances from the Ocean Disposal Sites as
8 alleged by plaintiff governments in the First Amended Complaint.
9 Said costs include, but are not limited to, Potlatch's costs of
10 investigating the alleged actual and/or threatened releases as
11 well as attorney's fees incurred to enforce CERCLA.

12 17. Plaintiff governments have alleged that all of the
13 Ocean Disposal Sites, as well as the Joint Outfall System ("JOS")
14 owned and operated by the Los Angeles County Sanitation Districts
15 ("LACSD"), are "facilities" within the meaning of Section 101(9)
16 of CERCLA, 42 U.S.C. § 9601(9). Therefore, on information and
17 belief, Potlatch alleges that plaintiff governments and/or their
18 agencies or departments are liable to Potlatch for all of its
19 costs of response because they are current owners and operators of
20 said facilities, under Section 107(a)(1) of CERCLA, 42 U.S.C. §
21 9607(a)(1), and were owners and operators of said facilities when
22 the alleged disposals of hazardous substances took place, under
23 Section 107(a)(2), 42 U.S.C. § 9607(a)(2).

24 18. Potlatch is informed and believes, and on that
25 basis alleges, that agencies or departments of the plaintiff
26 governments owned or operated facilities in Los Angeles County
27 which were and/or are dischargers of wastewater to the LACSD JOS
28 described in paragraphs 13 and 29 of the First Amended Complaint.

1 It is further alleged upon information and belief that some or all
2 of these facilities generated hazardous substances that were
3 discharged to the JOS which, in turn, were discharged into the
4 environment as alleged in plaintiffs' First Amended Complaint.
5 Therefore, plaintiff governments and/or their agencies or
6 departments are liable to Potlatch for its costs of response
7 pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3),
8 as persons who arranged for the disposal of hazardous substances.

9 19. If the allegations in the First Amended Complaint
10 are true, which Potlatch denies, the plaintiff governments by
11 their actions in permitting, managing and otherwise authorizing
12 Potlatch's discharge, and all other discharges to the Ocean
13 Disposal Sites, are "persons who by contract, agreement or
14 otherwise arranged for the disposal or treatment . . . of
15 hazardous substances . . .," within the meaning of Section
16 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), and are therefore
17 liable to Potlatch for all of its costs of response.

18 20. If the allegations of the First Amended Complaint
19 are true, which Potlatch denies, then plaintiff governments,
20 acting through their respective agencies or departments, by
21 permitting, authorizing or otherwise approving of Potlatch's use
22 of the JOS as well as the operation at the other Ocean Disposal
23 Sites, are "person(s) who [accept][] . . . or accepted any
24 hazardous substances for transport to disposal or treatment
25 facilities or sites selected by such persons . . ." and are liable
26 for all of Potlatch's response costs pursuant to CERCLA Section
27 107(a)(4), 42 U.S.C. § 9607(a)(4).

28 ///

1 21. Potlatch is further informed and believes, and on
2 that basis alleges that, the United States Army Corps of
3 Engineers, a department or agency of the plaintiff United States,
4 generated, transported and arranged for the disposal of dredged
5 spoils believed to contain hazardous substances from various
6 locations in Los Angeles Harbor to the Ocean Disposal Sites
7 outside of the Los Angeles Harbor. Therefore, the U.S. Army Corps
8 of Engineers is liable to Potlatch under CERCLA Sections 107(a)(3)
9 and (4), 42 U.S.C. §§ 9607(a)(3) and (4), for all of Potlatch's
10 costs of response.

11
12 **COUNT II -- CERCLA § 113(f) CLAIM FOR CONTRIBUTION**

13 22. Potlatch incorporates by reference Counterclaim
14 paragraphs 1 through 21, above, as though fully set forth herein.

15 23. Pursuant to Section 113(f)(1) of CERCLA, 42 U.S.C.
16 § 113(f)(1), any person may seek contribution from any other
17 person who is liable or potentially liable under Section 107(a) of
18 CERCLA, 42 U.S.C. § 9607(a), during any civil action under Section
19 107(a) of CERCLA, 42 U.S.C. § 9607(a). Potlatch hereby asserts a
20 counterclaim for contribution, indemnification, setoff and
21 recoupment from plaintiff governments for any and all response
22 costs incurred by Potlatch as well as any natural resource damages
23 or response costs Potlatch may be found liable for as a result of
24 plaintiffs' First Amended Complaint and any and all of Potlatch's
25 defense costs and other attorney's fees incurred as a result of
26 this litigation.

27 24. Potlatch asserts that plaintiff governments are
28 liable to Potlatch under Section 113(f) of CERCLA, 42 U.S.C. §

1 9613(f), for the reasons alleged in paragraphs 1 through 23 of
2 this Counterclaim.

3
4 **COUNT III -- SUBROGATION**

5 25. Potlatch asserts a counterclaim for contribution,
6 indemnification, setoff and recoupment against the plaintiff
7 governments based on its right to subrogation.

8 26. Potlatch incorporates by reference Counterclaim
9 paragraphs 1 through 24, above, as though fully set forth herein.

10 27. If Potlatch is liable as alleged in the First
11 Amended Complaint, which Potlatch denies, then Potlatch would be
12 subrogated to all rights, claims and causes of action of the
13 United States against the State, and Potlatch would be subrogated
14 to all rights, claims and causes of actions of the State against
15 the United States under Section 112(c)(2) of CERCLA, 42 U.S.C.
16 § 9612(c)(2), and common law principles of subrogation.

17
18 **COUNT IV -- NEGLIGENCE AND NEGLIGENCE PER SE**

19 28. Potlatch asserts a counterclaim for contribution,
20 indemnification, setoff and recoupment against the plaintiff
21 governments based on their negligence in the conduct of their
22 permitting activities for, in their capacity as the owners and
23 operators (or trustees) of, in their capacity as those who
24 arranged for the disposal of hazardous substances at, and in their
25 capacity as transporters of hazardous substances to the Ocean
26 Disposal Sites described herein.

27 29. Potlatch incorporates by reference Counterclaim
28 paragraphs 1 through 27, above, as though fully set forth herein.

1 30. If the allegations of the First Amended Complaint
2 are true, which Potlatch denies, then at all times relevant to the
3 First Amended Complaint, the plaintiff governments were in
4 violation of applicable statutes and regulations promulgated
5 thereunder, all as alleged in these counterclaims, so as to
6 constitute negligence per se, which negligence per se is the
7 proximate cause of the injuries and damages alleged in the First
8 Amended Complaint, and plaintiff governments are liable therefore.

9 31. If the allegations of the First Amended Complaint
10 are true, which Potlatch denies, then at all relevant times to the
11 First Amended Complaint, the plaintiff governments negligently
12 owned, located, created, maintained, controlled, managed and
13 operated several, if not all, of the Ocean Dumping Sites so as to
14 cause or permit the release of hazardous substances into the
15 environment and to proximately cause the injuries and damages
16 alleged in the First Amended Complaint.

17 32. If the allegations of the First Amended Complaint
18 are true, which Potlatch denies, then at all relevant times the
19 plaintiff governments were negligent in the performance of their
20 permitting duties, which negligence was the sole or substantial
21 cause of the injuries or damages alleged in the First Amended
22 Complaint.

23
24 **COUNT V -- DANGEROUS CONDITION OF PUBLIC PROPERTY**

25 33. Potlatch asserts a counterclaim for contribution,
26 indemnification, setoff and recoupment against the State for its
27 maintenance of a dangerous condition on public property.

28 ///

1 34. Potlatch incorporates by reference Counterclaim
2 paragraphs 1 through 32, above, as though fully set forth herein.

3 35. The State owned and/or controlled certain Ocean
4 Dumping Sites within the meaning of California Government Code
5 § 835.

6 36. If plaintiffs' allegations, that releases of
7 hazardous substances into the Bight Area have caused, and threaten
8 to cause, danger to the public health, welfare and the
9 environment, and injury to the natural resources, are true, which
10 Potlatch denies, then the Bight Area was and continues to be in a
11 dangerous condition. Therefore, the State is liable for
12 maintaining a dangerous condition on its property. California
13 Government Code § 835.

14 37. If plaintiffs' allegations are true, which Potlatch
15 denies, then the State's property was in a dangerous condition at
16 the time of all injuries alleged in the First Amended Complaint,
17 this dangerous condition was the proximate cause of those
18 injuries, and this condition created a reasonably foreseeable risk
19 of the injuries alleged. California Government Code § 835.

20 38. If plaintiffs' allegations are true, which Potlatch
21 denies, then Potlatch is informed and believes, and on that basis
22 alleges, that employees of the State, acting within the scope of
23 their employment, created the dangerous condition through their
24 wrongful and/or negligent acts and/or omissions. California
25 Government Code § 835.

26 39. If plaintiffs' allegations are true, which Potlatch
27 denies, the State, by and through its various agencies,
28 departments and employees, had actual and/or constructive

1 knowledge of the dangerous condition alleged in the First Amended
 2 Complaint and had sufficient time prior to the alleged injury to
 3 have taken measures to protect against the dangerous condition.
 4 California Government Code §§ 835, 835.2

5 40. If plaintiffs' allegations are true, which Potlatch
 6 denies, then the State's acts and/or omissions were unreasonable
 7 and/or negligent in light of the practicability and cost of
 8 pursuing alternative courses of action available to it.

9
 10 COUNT VI -- BREACH OF A MANDATORY DUTY

11 41. Potlatch asserts a counterclaim for contribution,
 12 indemnification, setoff and recoupment against the State of
 13 California for its failure to discharge its mandatory duties in
 14 accordance with California Government Code § 815.6.

15 42. Potlatch incorporates by reference Counterclaim
 16 paragraphs 1 through 40, above, as though fully set forth herein.

17 43. The State has been and is under mandatory duties
 18 imposed by the following enactments, among others, each of which
 19 was designed to protect against the kind of harm alleged in the
 20 First Amended Complaint:

21 (a) California Health & Safety Code § 25100, et seq.
 22 and regulations promulgated thereto require the California
 23 Department of Health Services ("DOHS") to review county and
 24 regional waste disposal plans to determine whether there is a need
 25 for additional or expanded hazardous waste facilities to safely
 26 manage the proper disposal of hazardous waste produced within the
 27 counties and regions, and to adopt, and revise when appropriate,
 28 standards and regulations for the management of hazardous wastes

1 to protect against hazards to the public health, to wildlife and
2 to the environment; and

3 (b) California Water Code § 13000 et seq. and
4 regulations promulgated thereunder impose a mandatory duty on the
5 State Water Resources Control Board ("State Water Board") and the
6 Regional Water Quality Control Board, Los Angeles ("Regional Water
7 Board") to control water quality through a state policy for water
8 quality control, to protect present and future beneficial uses of
9 water against untreated wastewater discharges. Additionally, the
10 statute requires the Boards to issue orders specifying abatement
11 or remedial action to correct violations by any person or entity
12 who discharges any wastes into the waters of California in
13 violation of waste discharge requirements or other orders or
14 prohibitions issued by the California Regional Water Quality
15 Control Board, and/or who threatens to create, or creates a
16 nuisance as a result of that discharge. Moreover, this statute
17 and its regulations impose a mandatory duty on the State and
18 Regional Water Boards to give the highest priority to improving or
19 eliminating discharges that adversely affect ocean areas subject
20 to massive waste discharge. This statute and its regulations also
21 impose a mandatory duty on the State and Regional Water Boards to
22 consider the effects of discharges to the ocean on the ocean
23 chemistry and mixing processes, marine life conditions, other
24 present or proposed outfalls in the vicinity, and relevant aspects
25 of areawide waste treatment management plans and programs, but not
26 of convenience to the discharger. The State and Regional Water
27 Board are also under the mandatory duty to require toxic and hard-
28 to-treat substances to be pretreated at the source if such

1 substances would be incompatible with effective and economical
2 treatment in municipal treatment plants. Overall, this statute
3 and its regulations impose a mandatory duty on the State and
4 Regional Water Boards to formulate and adopt a water quality
5 control plan for ocean waters of the State which guarantees that
6 the standards adopted are adequate and are not allowing
7 degradation to indigenous marine species.

8 44. If plaintiffs' allegations are true, which Potlatch
9 denies, then the State and the entities identified in Counterclaim
10 paragraph 4 had and have a mandatory duty to abate any nuisance
11 and/or dangerous condition that arose in the Southern California
12 Bight Area beyond those duties identified in Counterclaim
13 paragraph 43.

14 45. Notwithstanding the mandatory duties identified in
15 Counterclaim paragraphs 43 and 44, the State, DOHS, State Water
16 Board and Regional Water Board have breached their mandatory
17 duties and those breaches were the proximate cause of the injury
18 alleged in the First Amended Complaint.

19
20 **COUNT VII -- NUISANCE**

21 46. Potlatch asserts a counterclaim for contribution,
22 indemnification, setoff and recoupment against the plaintiff
23 governments for creation and maintenance of a nuisance.

24 47. Potlatch incorporates by reference Counterclaim
25 paragraphs 1 through 45, above, as though fully set forth herein.

26 ///

27 ///

28 ///

1 48. If plaintiffs' allegations are true, which Potlatch
2 denies, then the releases of hazardous substances constitute a
3 nuisance under California Civil Code § 3479, California Water Code
4 § 13050(m), and under common law.

5 49. Through its acts and/or omissions, the State, by
6 and through its employees, caused and maintain this nuisance and
7 any injury alleged in the First Amended Complaint. Specifically,
8 the State, acting through its various agencies including, but not
9 limited to, DOHS, the State Board and the Regional Board: (a)
10 encouraged, allowed and/or failed to prevent, abate or remedy the
11 release or threatened release of hazardous substances, if any,
12 resulting from any disposal of wastes into the Southern California
13 Bight Area; (b) encouraged, allowed and/or failed to prevent,
14 abate or remedy the release or threatened release of hazardous
15 substances through the LACSD JWPCP and JOS; (c) encouraged,
16 allowed and/or failed to prevent, abate or remedy the release of
17 hazardous substances, if any, through storm drain runoff into the
18 Southern California Bight Area; and (d) designed, sited,
19 controlled, managed and otherwise oversaw ocean dumping sites in
20 the Southern California Bight Area, and continues to do so.

21 50. If plaintiffs' allegations are true, which Potlatch
22 denies, then the State, as the entity responsible for negligently
23 creating and maintaining the nuisance, has had and now has a duty
24 under California law to abate the conditions constituting the
25 purported nuisance.

26 51. If plaintiffs' allegations are true, which Potlatch
27 denies, then the State, as the owner and/or operator of the
28 several ocean dumping sites, including the lands under and around

1 the LACSD JOS, is liable under California Civil Code § 3483 and
2 California Water Code § 13305(a) for creating and failing to abate
3 the nuisance.

4 52. If there are damages to natural resources as
5 alleged in the First Amended Complaint, which Potlatch denies,
6 then such damages are wholly or substantially caused by the
7 maintenance of a statutory and common law nuisance by the
8 plaintiff governments, who are strictly liable therefore.

9 53. To the extent Potlatch is held responsible pursuant
10 to the plaintiffs' claims as alleged in the First Amended
11 Complaint, it will suffer special damage giving rise to its right
12 to contribution, indemnification, set off and recoupment from the
13 plaintiff governments. Potlatch has already incurred special
14 damages for costs incurred to investigate the damages alleged in
15 the First Amended Complaint and to defend against the First
16 Amended Complaint.

17
18 COUNT VIII -- BREACH OF TRUST

19 54. Potlatch incorporates by reference Counterclaim
20 paragraphs 1 through 53, above, as though fully set forth herein.

21 55. The United States is the trustee for the Southern
22 California Bight Area and for the natural resources therein.

23 56. The United States' trusteeship results, among other
24 things, from the comprehensive protective scheme established by
25 federal and state laws, regulations and other legal requirements
26 applicable to the Southern California Bight Area and natural
27 resources therein and from the comprehensive control the United
28 States has possessed or possesses, or has asserted or asserts over

1 the Southern California Bight Area and the natural resources
2 therein.

3 57. The public, including Potlatch, is the beneficiary
4 of the United States' trusteeship.

5 58. If, as plaintiffs allege, hazardous substances have
6 been discharged to or released in the Southern California Bight
7 area, then, by discharging or releasing or allowing discharges or
8 releases of such hazardous substances, or by failing to remedy or
9 abate discharges or releases of such hazardous substances, the
10 United States has breached its trust obligations.

11 59. Potlatch has been injured by the United States'
12 breach of its trust obligations. Such injury cannot be
13 compensated or remedied by payment of money damages, but rather
14 only by issuance of declaratory and injunctive relief.

15
16 **COUNT IX -- DECLARATORY JUDGMENT**

17 60. Potlatch incorporates by reference Counterclaim
18 paragraphs 1 through 59, above, as though fully set forth herein.

19 61. If the allegations of the First Amended Complaint
20 are true, which Potlatch denies, an actual controversy has arisen
21 and exists between Potlatch and the United States in that Potlatch
22 contends, and the United States denies, that if Potlatch is held
23 liable to plaintiffs on any of their claims, then the United
24 States is liable, for the reasons stated above, to assume such
25 liability and the United States is liable to Potlatch for any and
26 all damages, costs or other liabilities, as incurred by, or
27 assessed against Potlatch.

28 ///

1 62. If the allegations of the First Amended Complaint
2 are true, which Potlatch denies, an actual controversy has arisen
3 and exists between Potlatch and the State of California in that
4 Potlatch contends, and the State of California denies, that if
5 Potlatch is held liable to plaintiffs on any of their claims, then
6 the State of California is liable, for the reasons stated above,
7 to assume such liability and the State of California is liable to
8 Potlatch for any and all damages, costs or other liabilities, as
9 incurred by, or assessed against Potlatch.

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, counterclaimant Potlatch prays for judgment
13 as follows:

14 1. On each counterclaim: actual damages as may be
15 proven at trial, interest at the legal rate, reasonable attorney's
16 fees, and costs of suit;

17 2. On each counterclaim: such other and further
18 relief as the Court may deem just and proper; and

19 3. If this Court enters judgment in any respect
20 against Potlatch, that this Court also enter judgment against the
21 plaintiff governments as follows:

22 (a) order plaintiffs to pay the full and total
23 costs of response and damages alleged in the First
24 Amended Complaint pursuant to CERCLA, 42 U.S.C.
25 § 9607(c)(2)(A)(i);

26 ///

27 ///

28 ///

1 (b) order plaintiffs to indemnify Potlatch in the
2 amount equivalent to the sum of the judgment entered
3 against it, its costs and its expenses, including
4 reasonable attorney's and expert's fees;

5 (c) order plaintiffs to pay their lawful share in
6 contribution;

7 (d) order setoff of the amount of the liability of
8 the plaintiffs against the amount of any liability found
9 against Potlatch;

10 (e) declare and adjudge that if Potlatch is held
11 liable to plaintiffs for any damages or costs, or any
12 other monetary relief, then Potlatch is entitled to full
13 indemnity from the United States against such liability;

14 (f) declare and adjudge that if Potlatch is held
15 liable to plaintiffs for any damages or costs, or any
16 other monetary relief, then Potlatch is entitled to full
17 indemnity from the State of California against such
18 liability;

19 (g) for judgment in favor of Potlatch and against
20 the United States for all costs and attorney's fees
21 expended by Potlatch in defending this action and in
22 prosecuting these counterclaims against the United
23 States;

24 (h) for judgment in favor of Potlatch and against
25 the State of California for all costs and attorney's
26 fees expended by Potlatch in defending this action and
27 in prosecuting these counterclaims against the State of
28 California; and

1 (i) any such other and further relief as this
2 Court deems just and proper.
3
4

5 **III.**

6 **CROSS-CLAIM OF CROSS-CLAIMANT POTLATCH CORPORATION AGAINST**
7 **DEFENDANT COUNTY SANITATION DISTRICT NO. 2 OF LOS ANGELES**
8

9 COMES NOW cross-claimant Potlatch and as its Cross-Claim
10 against co-defendant and cross-defendant County Sanitation
11 District No. 2 of Los Angeles County ("District No. 2"), hereby
12 alleges as follows:
13

14 **GENERAL ALLEGATIONS**

15 1. Potlatch and District No. 2 are each defendants on
16 the First Amended Complaint brought by plaintiffs in the within
17 civil action. Potlatch is a corporation incorporated under the
18 laws of the State of Delaware, and during the period from 1952 to
19 January 1979, it owned a paper products manufacturing plant in
20 Pomona, California, and operated that plant from 1952 to mid-1978.

21 2. Potlatch is informed and believes, and on that
22 basis alleges, that District No. 2 is a publicly-owned treatment
23 works established pursuant to the laws of the State of California.
24 District No. 2, acting on its own behalf and on behalf of 14 other
25 County Sanitation Districts in Los Angeles County (collectively
26 "LACSD"), pursuant to an agreement titled the Joint Outfall
27 Agreement, operates the Joint Outfall System. The Joint Outfall
28 System ("JOS") consists of a collection and treatment system for

1 wastewater from areas within Los Angeles County, including
2 Potlatch's former plant in Pomona, California, and includes the
3 Joint Water Pollution Control Plant ("JWPCP") which discharges
4 treated effluent through a system of outfall pipes located at
5 White's Point ("White's Point Outfall"). The claims of Potlatch
6 against District No. 2, as more fully set forth below, relate to
7 and arise out of the occurrences alleged by plaintiffs in the
8 First Amended Complaint, and thereby constitute appropriate cross-
9 claims pursuant to Federal Rule of Civil Procedure 13(g).

10 3. During the entire period in which Potlatch operated
11 its paper manufacturing plant in Pomona, California, Potlatch held
12 formal permits from appropriate governmental agencies, including
13 District No. 2, to utilize the JOS, including the JWPCP facility,
14 for the treatment of liquid effluent resulting from Potlatch's
15 manufacturing operations. At all times, Potlatch's use of the
16 JOS, including the JWPCP facility, was non-negligent and conformed
17 fully with all applicable local, state and federal statutes, rules
18 and regulations governing the disposal of industrial wastewater.
19 At all times, Potlatch relied upon District No. 2's operation of
20 the JOS, including the JWPCP, to likewise be non-negligent and to
21 conform fully with all applicable local, state and federal
22 statutes, rules and regulations governing the disposal of
23 industrial wastewater effluent.

24 4. Notwithstanding that Potlatch's use of the JOS,
25 including the JWPCP, was non-negligent, lawful and entirely within
26 the terms of use expressly invited and permitted by the
27 appropriate governmental agencies, including District No. 2,
28 plaintiffs allege by the First Amended Complaint herein that

1 hazardous substances, including DDT and PCBs, were not removed by
2 the JWPCP, and therefore were discharged by District No. 2 at the
3 White's Point Outfall, and consequently have been and continue to
4 be released into the environment within the meaning of Section
5 101(22) of the Comprehensive Environmental Response, Compensation
6 and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601(22).
7 Plaintiffs further allege that said releases have caused and will
8 continue to cause incurrence of response costs and damages
9 resulting from injury to and destruction and loss of natural
10 resources, including fish, birds and marine mammals, subject to
11 the alleged trusteeship of the United States and the State of
12 California. Plaintiffs seek to hold Potlatch, among others,
13 responsible for such response costs and damages, which are alleged
14 to have resulted from the discharges by District No. 2 at the
15 White's Point Outfall.

16 5. Potlatch is informed and believes, and on that
17 basis alleges, that District No. 2 is a local public entity within
18 the meaning of Cal. Govt. Code Sections 900.4 and 940.4. On or
19 about August 24, 1990, District No. 2 was served with a claim
20 pursuant to the California Tort Claims Act, Cal. Govt. Code
21 Section 900, et seq. for recovery of response costs, damages,
22 indemnity and contribution. District No. 2 has rejected the
23 claim.

24
25 **FIRST CLAIM FOR RELIEF**

26 **(Negligence)**

27 6. Potlatch repeats the allegations of paragraphs 1
28 through 5 of this Cross-Claim as though fully set forth herein.

1 7. District No. 2, as operator of the JOS, including
2 the JWPCP, had a duty to operate the system in a manner so as not
3 to endanger the environment and the welfare of those entities,
4 including Potlatch, that were invited and permitted to use the
5 JOS, including the JWPCP. By reason of the acts and omissions
6 alleged by plaintiffs in the First Amended Complaint, District
7 No. 2 breached this duty. As a direct and proximate result of
8 said breach, Potlatch has suffered damages, the exact amount of
9 which is presently unknown.

10
11 **SECOND CLAIM FOR RELIEF**

12 **(Negligence Per Se)**

13 8. Potlatch repeats the allegations of paragraphs 1
14 through 7 of this Cross-Claim as though fully set forth herein.

15 9. Potlatch is informed and believes, and on that
16 basis alleges, that the conduct of District No. 2 as alleged by
17 plaintiffs in the First Amended Complaint, which caused the
18 release of hazardous substances into the environment, is the type
19 of occurrence designed to be prevented by federal and state laws
20 and regulations regulating the handling and disposal of industrial
21 wastewater, hazardous substances and hazardous wastes and violated
22 such laws and regulations.

23 10. At all times relevant herein, Potlatch was among
24 the class of persons sought to be protected by federal and state
25 laws and regulations governing the handling and disposal of
26 industrial wastewater, hazardous substances and hazardous wastes.
27 As a proximate result of District No. 2's violations of federal
28 and state laws and regulations governing the handling and disposal

1 of industrial wastewater, hazardous substances and hazardous
2 wastes, Potlatch has suffered damage, the exact amount of which is
3 yet to be ascertained.

4
5 **THIRD CLAIM FOR RELIEF**

6 **(Public Nuisance)**

7 11. Potlatch repeats the allegations of paragraphs 1
8 through 5 of this Cross-Claim as though fully set forth herein.

9 12. The conduct of District No. 2, as alleged by
10 plaintiffs in the First Amended Complaint, constitutes a public
11 nuisance causing special injury to Potlatch in the form of costs
12 incurred to investigate the conditions created by the District's
13 conduct, costs incurred in defending Potlatch against the
14 consequences of that conduct, and any costs which Potlatch may be
15 compelled to expend in the future to compensate for or remediate
16 the consequences of the District's actions.

17
18 **FOURTH CLAIM FOR RELIEF**

19 **(Breach Of Obligations Arising From Permit)**

20 13. Potlatch repeats the allegations of paragraphs 1
21 through 5 of this Cross-Claim as though fully set forth herein.

22 14. In the entire period of its use of the JOS,
23 including the JWPCP, Potlatch paid to the appropriate governmental
24 agencies, including District No. 2, good and valuable
25 consideration in the form of permit fees for the right to said
26 usage. In consideration of the payment of said fees, District No.

27 ///

28 ///

1 2 agreed to permanently and safely treat, handle and dispose of
2 all wastewater effluent which Potlatch was invited and permitted
3 to discharge to the JOS, including the JWPCP.

4 15. By reason of the conduct alleged by plaintiffs in
5 the First Amended Complaint, District No. 2 breached its above
6 obligations to Potlatch arising from receipt of the fees paid by
7 Potlatch and as a consequence thereof, has damaged Potlatch in an
8 amount as yet unascertained.

9
10 **FIFTH CLAIM FOR RELIEF**

11 **(Breach Of Implied Warranty)**

12 16. Potlatch repeats the allegations of paragraphs 1
13 through 5 of this Cross-Claim as though fully set forth herein.

14 17. Implied in District No. 2's invitation and
15 permission to Potlatch for its use of the JOS, including the
16 JWPCP, was a warranty that District No. 2 would operate the JOS,
17 including the JWPCP, in such a manner so as to handle, treat and
18 dispose of any effluent discharged to the JOS by Potlatch without
19 injury to persons, property or the environment. In acting as
20 alleged by plaintiffs in the First Amended Complaint, District No.
21 2 breached said warranty, causing damage to Potlatch in an amount
22 as yet unascertained.

23
24 **SIXTH CLAIM FOR RELIEF**

25 **(Failure To Discharge Mandatory Duties)**

26 18. Potlatch repeats the allegations of paragraphs 1
27 through 5 of this Cross-Claim as though fully set forth herein.

28 ///

1 19. Potlatch is informed and believes, and on that
2 basis alleges, that as the operator of the JOS, including the
3 JWPCP, LACSD had a mandatory duty to protect against the release
4 of hazardous substances that might do harm to persons, property or
5 the environment through the White's Point Outfall. This mandatory
6 duty is imposed pursuant to statute and common law.

7 20. If the allegations in plaintiffs' First Amended
8 Complaint are true, which Potlatch denies, then Potlatch is
9 informed and believes, and on that basis alleges, that LACSD
10 failed to discharge its duty to protect against harm to persons,
11 property or the environment.

12 21. Based on the allegations in paragraphs 18 through
13 20, if Potlatch is held liable to plaintiffs under any of the
14 claims asserted in the First Amended Complaint, then LACSD is
15 either fully or partially liable for any such liability.

16
17 **SEVENTH CLAIM FOR RELIEF**

18 **(Dangerous Condition Of Property)**

19 22. Potlatch repeats the allegations set forth in
20 paragraphs 1 through 5 of this Cross-Claim as though fully set
21 forth herein.

22 23. If the allegations in plaintiffs' First Amended
23 Complaint are true, which Potlatch denies, then LACSD, as the
24 operator of the JOS, including the JWPCP, maintained such property
25 in a dangerous condition so as to cause the alleged releases of
26 hazardous substances into the San Pedro Channel.

27 ///

28 ///

1 24. As the proximate result of LACSD's actions and/or
2 omissions, Potlatch has been damaged in an amount according to
3 proof at trial.

4
5 **EIGHTH CLAIM FOR RELIEF**

6 **(Indemnity)**

7 25. Potlatch repeats the allegations of paragraphs 1
8 through 5 of this Cross-Claim as though fully set forth herein.

9 26. Potlatch has incurred and continues to incur costs
10 to investigate the damage alleged by plaintiffs in the First
11 Amended Complaint and to defend itself against the allegations
12 made by plaintiffs in the First Amended Complaint. Potlatch is,
13 in fact, innocent of any wrongdoing and District No. 2, by reason
14 of the conduct alleged by plaintiffs in the First Amended
15 Complaint, is obligated to reimburse Potlatch for all such costs
16 it has incurred to date, and may incur in the future by reason of
17 matters alleged in the First Amended Complaint, under the
18 doctrines of comparative fault, implied indemnity and equitable
19 indemnity.

20
21 **NINTH CLAIM FOR RELIEF**

22 **(CERCLA)**

23 **(42 U.S.C. § 9607(a))**

24 27. Potlatch repeats the allegations of paragraphs 1
25 through 5 of this Cross-Claim as though fully set forth herein.

26 28. The First Amended Complaint in this action alleges
27 that the JOS operated by District No. 2 and the Palos Verdes Shelf
28 area surrounding the White's Point Outfall operated by District

1 No. 2 as part of the JOS are both "facilities" within the meaning
2 of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and that
3 hazardous substances have been and continue to be "released" into
4 the environment from such facilities within the meaning of Section
5 101(22) of CERCLA, 42 U.S.C. § 9601(22). Based on such
6 allegations, Potlatch is informed and believes, and on that basis
7 alleges, that District No. 2 is the owner or operator of a
8 facility and a person who at the time of disposal of a hazardous
9 substance owned or operated a facility at which such hazardous
10 substances were disposed of within the meaning of Section 107(a)
11 of CERCLA, 42 U.S.C. § 9607(a). Potlatch is informed and
12 believes, and on that basis alleges, that District No. 2 is also
13 a person who accepts or accepted a hazardous substance for
14 transport to disposal or treatment facilities or sites selected by
15 such person from which there is a release within the meaning of
16 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Potlatch is
17 further informed and believes, and on that basis alleges, that
18 District No. 2 is also a person who arranges or arranged for the
19 disposal or treatment of hazardous substances at a facility from
20 which there is a release within the meaning of Section 107(a)(3)
21 of CERCLA, 42 U.S.C. § 9607(a)(3).

22 29. Potlatch has already incurred substantial direct
23 response costs including, but not limited to, the costs of
24 investigating the releases alleged by plaintiffs in the First
25 Amended Complaint and its costs of enforcing CERCLA. It was
26 necessary to incur such costs and their incurrence was and is
27 consistent with the National Contingency Plan. Potlatch is
28 informed and believes that it will be necessary to incur

1 additional response costs in the future which will be consistent
2 with the National Contingency Plan. District No. 2 is liable to
3 Potlatch for all such response costs pursuant to Section
4 107(a)(4)(B) of CERCLA, 42 U.S.C. § 9607(a)(4)(B).

5
6 **TENTH CLAIM FOR RELIEF**

7 **(Contribution)**

8 30. Potlatch repeats the allegations of paragraphs 1
9 through 5 and paragraphs 28 through 29 of this Cross-Claim as
10 though fully set forth herein.

11 31. Pursuant to 42 U.S.C. § 9613(f)(1), District No. 2
12 is liable to Potlatch for contribution to all natural resource
13 damages and response costs Potlatch has incurred to date or will
14 incur in the future, including, but not limited to, attorney's
15 fees incurred by Potlatch in defending the First Amended Complaint
16 and in prosecuting the within Cross-Claim against District No. 2,
17 costs incurred by Potlatch in investigating the releases of
18 hazardous substances alleged by the First Amended Complaint, and
19 any amounts Potlatch may be compelled to expend in the future to
20 remediate any condition created by said releases or as damages for
21 injury to, destruction of, or loss of natural resources.

22
23 **ELEVENTH CLAIM FOR RELIEF**

24 **(Declaratory Relief)**

25 32. Potlatch repeats the allegations of paragraphs 1
26 through 31 of this Cross-Claim as though fully set forth herein.

27 33. An actual, legal controversy now exists between
28 Potlatch and District No. 2, and Potlatch seeks a judicial

1 declaration of its rights and legal relations with District No. 2
2 pursuant to 28 U.S.C. Section 2201. Potlatch contends that
3 District No. 2 by reason of its breaches of duties as alleged
4 above is liable to Potlatch for any and all damages caused by
5 these breaches and for any further liability which Potlatch may
6 incur towards the plaintiffs herein as a result of these breaches.
7 Potlatch is informed and believes, and on that basis alleges, that
8 District No. 2 denies that it is liable to Potlatch for any and
9 all damages caused by the alleged breaches.

10 34. A declaratory judgment is appropriate in that a
11 declaratory judgment will obviate the need for multiple lawsuits
12 as Potlatch incurs costs or damages and/or if Potlatch is found to
13 be liable to plaintiffs, thereby providing a complete resolution
14 of the disputes between Potlatch and District No. 2.

15
16 **PRAYER FOR RELIEF ON CROSS-CLAIM**

17 WHEREFORE, Potlatch prays for judgment as follows:

18 1. On each Claim for Relief: actual damages as may be
19 proven at trial, interest at the legal rate, reasonable attorney's
20 fees, and costs of suit;

21 2. On the Eighth Claim for Relief: any and all
22 damages that Potlatch is found to owe to plaintiffs herein on the
23 First Amended Complaint;

24 3. On the Eleventh Claim for Relief: a declaration
25 that District No. 2 is liable to Potlatch for damages caused by
26 District No. 2's breaches and that District No. 2 is required to
27 indemnify Potlatch for any damages which Potlatch is required to
28 pay to plaintiffs herein; and

1 4. On each Claim for Relief: such other and further
2 relief as the Court may deem just and proper.

3
4
5 IV.

6 **CROSS-CLAIM OF POTLATCH CORPORATION AGAINST COUNTY**
7 **SANITATION DISTRICT NO. 2 OF LOS ANGELES AND A DEFENDANT**
8 **CLASS OF PERSONS AND ENTITIES SIMILARLY SITUATED**
9 **(F.R.C.P. Rule 13(g); 23)**
10

11 COMES NOW defendant Potlatch Corporation ("Potlatch")
12 and as a Cross-Claim against co-defendant County Sanitation
13 District No. 2 of Los Angeles County ("District No. 2"), together
14 with Does 1 through 40,000, hereby alleges as follows:
15

16 **GENERAL ALLEGATIONS**

17 1. Potlatch and District No. 2 are each defendants on
18 the First Amended Complaint brought by plaintiffs in the within
19 civil action. Potlatch is a corporation incorporated under the
20 laws of the State of Delaware, and during the period from 1952 to
21 January 1979, owned a paper products manufacturing plant in
22 Pomona, California, and operated that plant from 1952 to mid-1978.

23 2. Potlatch is informed and believes that County
24 Sanitation District No. 2 of Los Angeles is a publicly-owned
25 treatment works established pursuant to the laws of the State of
26 California. District No. 2, acting on its own behalf and on
27 behalf of 14 other County Sanitation Districts in Los Angeles
28 County (collectively "LACSD"), pursuant to an agreement titled the

1 Joint Outfall Agreement, operates the Joint Outfall System. The
2 Joint Outfall System consists of a collection and treatment system
3 for wastewater from areas within Los Angeles County, including
4 Potlatch's former plant in Pomona, California, and includes the
5 Joint Water Pollution Control Plant ("JWPCP") which discharges
6 treated effluent into the San Pedro Channel through a system of
7 outfall pipes located at White's Point ("White's Point Outfall").

8 3. Notwithstanding that cross-claimant's use of the
9 JOS, including the JWPCP, was non-negligent, lawful and entirely
10 within the terms of use expressly invited and permitted by the
11 appropriate governmental agencies, plaintiffs allege by the First
12 Amended Complaint herein that hazardous substances, including DDT
13 and PCBs, were not removed by the JWPCP, and therefore were
14 discharged by District No. 2 at the White's Point Outfall, and
15 consequently have been and continue to be released into the
16 environment within the meaning of Section 101(22) of the
17 Comprehensive Environmental Response, Compensation and Liability
18 Act of 1980 ("CERCLA"), 42 U.S.C. § 9601(22). Plaintiffs further
19 allege that said releases have caused and will continue to cause
20 the incurrence of response costs and damages resulting from injury
21 to and destruction and loss of natural resources, including fish,
22 birds and marine mammals, subject to the alleged trusteeship of
23 the United States and the State of California. Plaintiffs seek to
24 hold Potlatch, among others, responsible for such response costs
25 and damages, which are alleged to have resulted from the
26 discharges by District No. 2 at the White's Point Outfall.

27 4. Does 1 through 40,000 are persons and entities,
28 other than the named defendants on the First Amended Complaint,

1 the identities of whom are presently unknown to Potlatch, who
2 have, at any time, used the JOS, including the JWPCP, for the
3 disposal of any hazardous substance alleged by plaintiffs to have
4 caused any damage, or otherwise give rise to any relief, sought by
5 plaintiffs' First Amended Complaint (hereinafter "defendant
6 class").

7 5. Potlatch is informed and believes, and on that
8 basis alleges, that District No. 2 is a local public entity within
9 the meaning of Cal. Govt. Code Sections 900.4 and 940.4. On or
10 about August 24, 1990, District No. 2 was served with a claim
11 pursuant to the California Tort Claims Act, Cal. Govt. Code
12 Section 900, et seq. for recovery of response costs, damages,
13 indemnity and contribution. District No. 2 has rejected the
14 claim.

15
16 **FIRST CLAIM FOR RELIEF**

17 **(Declaration That Potlatch Is Entitled To**
18 **Relief From The Defendant Class For Any**
19 **Liability Arising To Plaintiffs)**

20 6. Potlatch repeats the allegations of paragraphs 1
21 through 5 of this class Cross-Claim as though fully set forth
22 herein.

23 7. Potlatch is informed and believes, and on that
24 basis alleges, that the damages for which plaintiffs seek to hold
25 cross-claimant liable relate to conditions caused by the
26 discharges of the defendant class from the JOS, since it began
27 releasing effluent into the San Pedro Channel through the White's
28 Point Outfall. Potlatch both denies any such damages and, for the

1 reasons set forth in its Answer and Counterclaims, denies that
2 plaintiffs are entitled to any relief against others, including
3 Potlatch, on account of the matters alleged by the First Amended
4 Complaint. However, if and to the extent that plaintiffs are
5 entitled to any relief on account of the matters alleged by the
6 First Amended Complaint, and if and to the extent that relief
7 should not be the sole responsibility of District No. 2 as prayed
8 for by Potlatch's Cross-Claim, then the entire defendant class
9 should share the burden of such relief, not simply the eight
10 entities sued by plaintiffs.

11 8. If Potlatch is held liable to plaintiffs on any
12 claim, or combination of claims asserted by said plaintiffs,
13 Potlatch is entitled to full indemnity and recovery, including
14 injunctive relief, if appropriate, against the defendant class
15 because said class is responsible for the conditions alleged to
16 exist in the San Pedro Channel.

17 9. Potlatch is informed and believes, and on that
18 basis alleges, that thousands of persons and entities constituting
19 the defendant class have been invited and permitted by District
20 No. 2 to use the JOS, including the JWPCP, for disposal of their
21 wastes and have, pursuant to such permission, discharged their
22 wastes to the JOS, including the JWPCP. This has continuously
23 occurred since the system became operational.

24 10. Potlatch is informed and believes, and on that
25 basis alleges, that the number of prior and current users of the
26 JOS, including the JWPCP, amounts to many thousands of persons and

27 ///

28 ///

1 entities, the identities of which are reflected upon records
2 maintained by District No. 2 and other County Sanitation Districts
3 in Los Angeles County.

4 11. Potlatch's claim for full indemnity and recovery
5 against the defendant class, including injunctive relief, if
6 appropriate, is properly brought as a defendant's class action
7 pursuant to Rule 23 of the Federal Rules of Civil Procedure
8 because:

9 a. The defendant class is so numerous that
10 joinder of all members is impracticable;

11 b. Potlatch alleges a joint obligation on behalf
12 of all members arising out of their discharge of wastes
13 to the JOS, including the JWPCP;

14 c. There are questions of law and fact common to
15 the class;

16 d. District No. 2 is an adequate representative
17 since its claims and defenses are typical of the class,
18 and it should therefore fairly and adequately protect
19 the interests of the class; and

20 e. The questions of law or fact common to the
21 members of the class predominate over any questions
22 affecting only individual members and that a class
23 action is superior to other available methods for the
24 fair and efficient adjudication of the controversy.

25 12. The prosecution of separate actions against
26 individual users of the JOS, including the JWPCP, creates the risk

27 ///

28 ///

1 of inconsistent or varying adjudications establishing, as to
2 Potlatch, incompatible rights, obligations and standards of
3 conduct.

4 13. District No. 2 is particularly well suited to serve
5 as a representative of the defendant class, since:

6 a. District No. 2 has itself used the JOS,
7 including the JWPCP, for disposal of hazardous
8 substances which plaintiffs allege to have caused
9 damages;

10 b. District No. 2 operates the JOS, including the
11 JWPCP, and is thus directly responsible for all
12 discharges therefrom;

13 c. District No. 2 has records available to it by
14 which it can identify each class member; and

15 d. District No. 2, by virtue of the permits which
16 it has granted to each member of the defendant class,
17 has an existing affirmative duty to protect each class
18 member's interests in actions taken pursuant to said
19 permits.

20 14. District No. 2 is further appropriate as the
21 defendant class representative since it has available to it means
22 by which to administer, on a class-wide basis, the relief sought
23 herein.

24
25 **PRAYER FOR RELIEF ON CLASS CROSS-CLAIM**

26 WHEREFORE, Potlatch prays:

27 1. For a judicial determination of the respective
28 rights and duties of Potlatch and the defendant class with respect

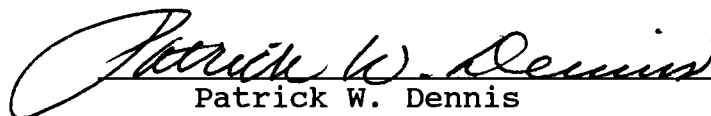
1 to the abatement and remedy of hazardous conditions which
2 plaintiffs allege exist in the San Pedro Channel, including a
3 declaration that if Potlatch is held liable to plaintiffs for any
4 costs, including response costs, damages, or other monetary
5 relief, Potlatch is entitled to full indemnity from the defendant
6 class against such liability;

7 2. For a declaration that if Potlatch is held liable
8 to abate or remedy, or respond with any form of monetary relief,
9 as respects any conditions existing as a result of releases from
10 the JOS, including the JWPCP, Potlatch is entitled to injunctive
11 relief requiring the defendant class, through District No. 2, to
12 perform all abatement or other actions which Potlatch is ordered
13 or held liable to perform and to indemnity from the defendant
14 class from and against any injunctive and/or monetary relief that
15 might be imposed upon Potlatch; and

16 3. For such other and further relief as the Court
17 deems just and proper, including Potlatch's attorney's fees.

18
19 DATED: October 9, 1990.

20 GREGORY R. McCLINTOCK, P.C.
21 WARD L. BENSHOOF, P.C.
22 PATRICK W. DENNIS
23 ELAINE M. LEMKE
24 McCLINTOCK, WESTON, BENSHOOF,
25 ROCHEFORT, RUBALCAVA & MacCUISH

26
27 
28 Patrick W. Dennis

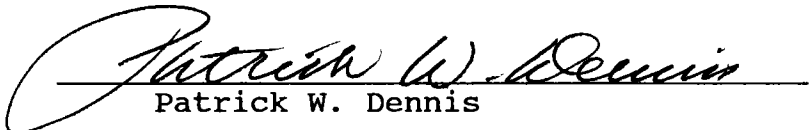
Attorneys for Defendant, Counterclaimant
and Cross-Claimant POTLATCH CORPORATION

DEMAND FOR JURY TRIAL

Potlatch hereby demands that the claims made in the First Amended Complaint and by Potlatch's counterclaims and cross-claims be tried by a jury.

DATED: October 9, 1990.

GREGORY R. McCLINTOCK, P.C.
WARD L. BENSHOOF, P.C.
PATRICK W. DENNIS
ELAINE M. LEMKE
McCLINTOCK, WESTON, BENSHOOF,
ROCHEFORT, RUBALCAVA & MacCUISH


Patrick W. Dennis

Attorneys for Defendant, Counterclaimant
and Cross-Claimant POTLATCH CORPORATION

(PROOF OF SERVICE - 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 444 South Flower Street, Fifth Floor, Los Angeles, California 90071.

On October 9, 1990, I served the foregoing document(s) described as **ANSWER OF DEFENDANT POTLATCH CORPORTION TO FIRST AMENDED COMPLAINT; COUNTERCLAIMS; CROSS-CLAIMS; DEMAND FOR JURY TRIAL** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

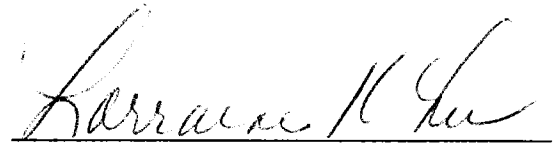
 x I placed such envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California.

 x I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

 I delivered such envelope by hand to the offices of the addressees.

 I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

 x I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Lorraine K. Lee

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STAUFFER MANAGEMENT CO., and ICI AMERICAN
HOLDINGS, INC.)**

1 PROOF OF SERVICE BY FEDERAL EXPRESS

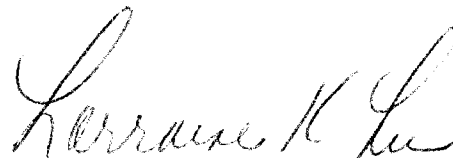
2 I, the undersigned, say: I am and was at all times
3 herein mentioned a resident of the County of Los Angeles, over
4 the age of eighteen years and not a party to the within action
5 or proceeding; that my business address is 444 South Flower
6 Street, Fifth Floor, Los Angeles, California 90071; that I am
7 employed in the office of McClintock, Weston, Benshoof,
8 Rochefort, Rubalcava & MacCuish by a member of the Bar of this
9 Court at whose direction the service mentioned herein below was
10 made.

11 On October 9, 1990, I caused to be served upon each of
12 the persons named below a copy of the following document(s):
13 **ANSWER OF DEFENDANT POTLATCH CORPORATION TO FIRST AMENDED**
14 **COMPLAINT; COUNTERCLAIMS; CROSS-CLAIMS; DEMAND FOR JURY TRIAL** by
15 sending the same by Federal Express addressed as follows:

16
17 SEE ATTACHED SERVICE LIST
18
19

20 I declare under penalty of perjury that the foregoing
21 is true and correct.

22 Executed on October 9, 1990, at Los Angeles,
23 California.

24
25 

26 Lorraine K. Lee
27
28

SERVICE LIST

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ANGELES REGIONAL WATER QUALITY CONTROL BOARD)**

(PROOF OF SERVICE - 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1950 So. Santa Fe Avenue, Suite 101, Los Angeles, California 90021 and am employed by the office of McClintock, Weston, Benshoof, Rochefort, Rubalcava & MacCuish.

On October 9, 1990, I served the foregoing document(s) described as **ANSWER OF DEFENDANT POTLATCH CORPORATION TO FIRST AMENDED COMPLAINT; COUNTERCLAIMS; CROSS-CLAIMS; DEMAND FOR JURY TRIAL** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

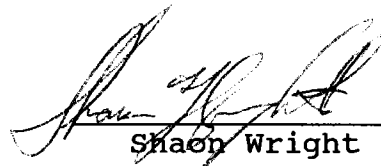
____ I placed such envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California.

____ I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

 X I delivered such envelope by hand to the offices of the addressees.

____ I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

 X I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Shaun Wright